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**FISCAL IMPACT STATEMENT**

**LS 6106**  
**BILL NUMBER: HB 1022**

**NOTE PREPARED:** Nov 16, 2011  
**BILL AMENDED:**

**SUBJECT:** Ephedrine and Pseudoephedrine.

**FIRST AUTHOR:** Rep. Kubacki  
**FIRST SPONSOR:**

**BILL STATUS:** As Introduced

**FUNDS AFFECTED:** ☒ **GENERAL**  
☒ **DEDICATED**  
☒ **FEDERAL**

**IMPACT:** State & Local

**Summary of Legislation:** This bill makes materials, compounds, mixtures, or preparations that contain ephedrine or pseudoephedrine Schedule III controlled substances subject to being dispensed only by a prescription.

**Effective Date:** July 1, 2012.

**Summary of State Impact:** The fiscal impact of this bill has five components.

- (1) The bill will result in about \$14,900 annually in additional Medicaid cost.
- (2) The bill is estimated to require \$127,000 in FY 2013 and approximately \$72,000 annually thereafter for the Indiana Professional Licensing Agency and the Board of Pharmacy.
- (3) The Indiana State Police estimate an undetermined level of cost avoidance due to the decline in the need to detect and clean up clandestine laboratory sites.
- (4) Sales tax revenues would decrease by an indeterminate amount as a result of changing the status of products containing ephedrine and pseudoephedrine from over-the-counter to Schedule III (prescription drug) status.
- (5) Costs for the incarceration of offenders convicted of dealing in a Schedule III controlled substance offense could increase.

**Explanation of State Expenditures:** *Indiana Professional Licensing Agency (IPLA) and Board of Pharmacy Expenditures:* The IPLA and the Board of Pharmacy estimate that placing ephedrine and pseudoephedrine on the Schedule III list would require \$127,000 in FY 2013 and approximately \$72,000 annually thereafter.

It is estimated that increased data collection and reporting requirements for additional scheduled drug purchases for the 1,400 in-state pharmacies may require one additional compliance staff position within the Indiana Scheduled Prescription Electronic Collections and Tracking (INSPECT) program. The annual cost associated with an additional staff position is estimated to be \$38,000 annually. Increased annual data hosting and storage costs and system maintenance cost due to increased volume of data are estimated to require an additional \$34,000. One-time software modifications that will be necessary due to the additional scheduled drugs and increased sales reporting volume are estimated to require \$55,000 in the first year.

*Medicaid Expenditures:* Currently, Medicaid requires prescriptions for over-the-counter (OTC) medications for Medicaid members. Only those OTC medications included on the Medicaid formulary are considered to be covered drugs. The formulary includes pseudoephedrine products. Medicaid does not pay a dispensing fee to pharmacies for OTC claims.

If pseudoephedrine products were changed from OTC status to a prescription Schedule III drug, a dispensing fee of up to \$3.00 would be paid to the pharmacy provider. The Office of Medicaid Policy and Planning estimates 15,000 annual claims for pseudoephedrine products would result in additional annual Medicaid dispensing fees of \$45,000. The state matching share of the additional cost would be about \$14,900.

Medicaid is jointly funded by the state and federal governments. The effective state share of program expenditures is approximately 33%. Medicaid medical services are matched by the effective federal match rate (FMAP) in Indiana at approximately 67%. Administrative expenditures with certain exceptions are matched at the federal rate of 50%.

*Indiana State Police:* The ISP have reported that no additional costs would be expected to be incurred as a result of placing ephedrine and pseudoephedrine on the Schedule III list. ISP anticipates the impact of requiring a prescription for these compounds would be a decrease in the level of resources currently used to dismantle clandestine labs and the associated environmental cleanup. During CY 2010, ISP reported 1,395 methamphetamine (meth) labs. ISP estimates that the average cost of cleanup per meth lab is \$2,128. The average cost does not include costs to social service organizations, remediation, incarceration, or medical expenses incurred.

*Criminal Offenses:* Costs for the incarceration of offenders convicted of dealing in a Schedule III controlled substance offense could increase if more people are incarcerated as a result of adding to the list of Schedule III controlled substances. Also, costs of incarceration could increase because racketeering influence and corrupt organization statutes apply to dealing controlled substance offenses and, depending on the circumstances of a controlled substance offense, portions of a sentence may not be suspended. Felony murder charges apply when a person kills another person while dealing a Schedule III controlled substance.

Although not expected to have a fiscal impact on state agencies, adding to the controlled substance schedule may increase the number of driving license suspensions and professional license revocations (depending on the actions of the court and the professional licensing boards or state agencies involved).

The average expenditure to house an adult offender was \$18,836 in FY 2011. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the incremental cost for medical care, food, and clothing is approximately \$3,318 annually, or \$9.09 daily, per prisoner. The estimated average cost of housing a juvenile in a state juvenile facility was \$75,591 in FY 2011.

*Ephedrine /Pseudoephedrine Background Information:* Ephedrine and pseudoephedrine are known as precursor drugs necessary to the production of methamphetamine. Indiana currently requires the sale of cold and allergy products containing these drugs to be limited and tracked by purchaser with the products maintained behind the counter or in full view of a pharmacist. Clandestine meth labs are considered a public safety menace; being explosive, toxic, and environmentally pervasive. The costs of dealing with meth lab investigation, dismantling, and cleanup affect the budgets of numerous state agencies. ISP data indicates that in 2002, there were 732 clandestine labs located and dismantled statewide; in 2010, ISP reported 1,395 labs. ISP estimates the average cost of cleanup of \$2,128 per lab. ISP seizes about 96% of the total number of labs located and dismantled in the state.

Two states, Oregon and Mississippi have enacted legislation requiring a prescription for products containing ephedrine or pseudoephedrine. Oregon's data demonstrates declines in clandestine labs for three phases of limitations on purchases of ephedrine and pseudoephedrine. The first decline was associated with a statute that moved the products behind the counter, the second phase required photo identification and logging of purchases which appeared to be responsible for further declines in meth labs. The third phase, effective since 2006, designated ephedrine and pseudoephedrine as prescription drugs. In 2004, Oregon reported 448 clandestine labs in the state. Since the prescription requirement went into effect, the number of meth labs in Oregon were reported to be 20 in 2007, 21 in 2008, 13 in 2009, and 13 in 2010. This represents a decrease of almost 98%. In addition the majority of the reported meth lab incidents from 2007 through 2010 were dump sites, partial, or remnants - not operational meth lab incidents.

**Explanation of State Revenues:** *State Sales Tax Revenue:* Sales tax revenues would decrease as a result of changing the status of products containing ephedrine and pseudoephedrine from OTC to Schedule III. Prescription drug purchases are exempt from sales tax while OTC products are taxed. The amount of tax revenue lost as a result of the change in status is indeterminate but would depend on the number of ephedrine/pseudoephedrine sales that would actually be transferred to prescription sales and the level of OTC product substitution that occurs as a result of the unavailability of ephedrine/pseudoephedrine.

*Excise Tax Revenue:* Revenues may increase because illegal controlled substances are subject to a \$40-per-gram, or other unit, excise tax. However, the expected increase in excise tax revenue is minimal - the revenues in FY 2009 were about \$200 from all schedule controlled substances excise taxes. Criminal offense penalties may include fines, and vehicles or other property involved in controlled substance offenses may be forfeited.

(See *Explanation of State Expenditures* regarding federal reimbursement in the Medicaid Program.)

*Criminal Offenses:* If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for all felony offenses is \$10,000. Criminal fines are deposited in the Common School Fund.

**Explanation of Local Expenditures:** *Criminal Offenses* - If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. The average cost per day is approximately \$44.

**Explanation of Local Revenues:** *Criminal Offenses* - If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$120 criminal costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of

record may receive 3% of the criminal costs fee. In addition, several additional fees may be collected at the discretion of the judge and depending upon the particular type of criminal case.

**State Agencies Affected:** IPLA, Board of Pharmacy; FSSA, Office of Medicaid Policy and Planning; Indiana State Police; Department of Corrections.

**Local Agencies Affected:** Trial courts, local law enforcement agencies.

**Information Sources:** FSSA, ISP, IPLA, Board of Pharmacy, *Crime in Oregon Report*, June 2010, Criminal Justice Commission, State of Oregon at: [http://www.oregon.gov/CJC/docs/Crime\\_Report\\_2010.pdf?ga=t](http://www.oregon.gov/CJC/docs/Crime_Report_2010.pdf?ga=t); 2010 and 2011 Oregon statistics at <http://www.oregondec.org/OregonMethLabStats.pdf>; and *DEA State Fact Sheets* at [http://www.justice.gov/dea/pubs/state\\_factsheets/oregon.html](http://www.justice.gov/dea/pubs/state_factsheets/oregon.html), Statement of Senator Ron Wyden of Oregon to the Senate Caucus on International Narcotics Control Hearing, April 13, 2010, at <http://drugcaucus.senate.gov/wyden-pseudoephedrine-hearing-4-13-10.html>; DOC; ISP; Doug Gosser, Indiana Sheriffs' Association, 317-356-3633; [www.in.gov/meth/](http://www.in.gov/meth/).

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